

REMARKS

Claim 1 now consists of the improvement granules on a holding base. Other non-narrowing changes to claim 1 do not invoke any present Festo decision.

The Response to Arguments on page 2 of the Action is traversed, because the Sellin patent does not show in Fig. 5 or elsewhere granules that are bonded to a singular, sheet-like holding base, as claimed. The Sellin patent discloses filling containers 4 that are bonded onto plural supports, thereby teaching away from the claims that a single support can provide multiple, non-touching granules. Patents that teach away from the claims do not support a rejection alone or in combination.

The rejection of claim 15 under 35 USC 112, second paragraph, for lack of antecedent basis to the claimed "... a ... refrigerator ..." is not understood. The courtesy of an explanation would be appreciated if the rejection is maintained.

The rejection of independent claim 1 and dependent claims under 35 USC 103 for obviousness from the Spokoyny, et al. and Sellin patents finds that the Spokoyny, et al. patent discloses the claimed invention "... with the exception of providing numerous granules ... bonded not in contacton surfaces of a holding base." Because the Sellin patent does not disclose this either, as noted above, the combination of these references cannot make the claimed invention obvious.

Further, while intended use may not support patentability, the claimed invention is limited by the Jepson formulation of the claim to the improvement of a low-temperature heat exchanger that is neither disclosed nor suggested to one of ordinary skill by the patents to high-temperature devices. It would not be obvious to one of ordinary skill to improve a refrigerator from a way to grill a steak.

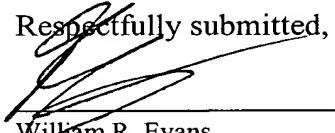
Furthermore, only the Action finds the granule size a mere matter of design choice and not a matter of surface area and volume relative to radiation and conduction rates. In Northern climates, at least, it is known to those of ordinary skill that big bodies freeze more slowly than small ones. Therefore, because the Action is contrary to ordinary knowledge, its assertion must be a fact known only to the Examiner, for which the applicant calls for a reference or affidavit under 37 CFR 1.104(d).

The fact that it is known to use small granules does not detract from the support for patentability of this limitation in the combination claimed. Nevertheless, as requested, references are attached.

New claims 21-23 are based on prior claims 1, 5 and 6.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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